HB 1308, HD2
Testimony

EDT/EDU

UNIVERSITY OF HAWAI'I SYSTEM
Legislative Testimony

Testimony Presented Before the
Senate Committee on Economic Development and Technology
and the
Senate Committee on Education
March 16, 2011 at 1:15 p.m.
By Gene I. Awakuni
Chancellor, University of Hawai`i – West O`ahu

HB 1308, HD2 – RELATING TO DIGITAL MEDIA

Dear Chair Fukunaga, Chair Tokuda, Vice Chair Wakai, Vice Chair Kidani
and Members of the Committees:

Thank you for this opportunity to express our support for HB 1308 HD 2, which creates digital media subzones surrounding University of Hawai`i campuses. As you know, UH West O`ahu is building a new campus in Kapolei that will make a university education more accessible to residents in Hawaii's fastest growing region. We are also building a campus that will serve as a driver for economic growth.

One of the ways we are contributing to job creation is through the development of the Center for Creative Media. We envision the center as the premiere media school in the Pacific Rim that capitalizes on the wealth of creative talent, recognized achievement and entrepreneurial spirit of West O`ahu schools and programs including Waianae's Searider Productions and Makaha Studios.

To further leverage our programs and create synergies that will propel the development of new digital industry jobs, we are also embarking upon the development of a science and technology park next to the campus with the goal of attracting digital media companies to locate there. Therefore we support the intent of this bill, which would assist us in our efforts to grow the emerging industry of digital media.

Thank you for your support of UH West O`ahu.

NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
INTERIM DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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STATEMENT OF

RICHARD C. LIM, INTERIM DIRECTOR
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

BEFORE THE

SENATE COMMITTEES ON
ECONOMIC DEVELOPMENT AND TECHNOLOGY
AND
EDUCATION

Wednesday, March 16, 2011
1:15 P.m.
State Capitol, Conference Room 016
In consideration of

HB1308 H.D. 2
RELATING TO DIGITAL MEDIA

Chairs Fukunaga and Tokuda, Vice Chairs Wakai and Kidani, and Members of the Committees.

The Department of Business, Economic Development, and Tourism (DBEDT) supports the intent of HB1308 HD2 which seeks to establish a digital media enterprise zone and a digital media infrastructure tax credit incentive, renames the existing Hawaii Television and Film Development Special Fund (HRS 201-113) and Hawaii Television and Film Development Board (HRS 201-112) the Hawaii Film Office Special Fund, to the Hawaii Film Office Development Special Fund and Hawaii Film Office board respectively. The measure also identifies revenue streams for the fund to support operations and personnel of the Creative Industries Division's Hawaii Film Office (aka Hawaii Film Branch).

The department supports this concept, provided the special fund does not supplant the current budget requests for general funds for the Creative Industries Division and its Film and Arts and Culture Development branches. We defer to Department of Taxation as to the fiscal impacts of the measure and any additional impacts to operations and staffing required, should this measure pass.

Hawaii's digital media sector has increased 10% since the department began tracking creative industries activity in 2002. By establishing digital media enterprise zones, the department estimates that for each $1 million dollars spent by a digital media company, 5.31 direct jobs will be created at an average annual wage of $59,572 (Bureau of Labor Statistics 2009 data), with a total of $109,679 of direct, indirect and induced tax from spending. Collectively, Hawaii creative sectors contribute $4 billion to Hawaii's gross domestic product annually, building the foundation of Hawaii's creative economy.

As the existing Hawaii Television and Film Development board is currently inactive, the department does not believe that changing the board name will affect the intent of the statute, but respectfully requests amending the language in Sections 6 and 8 to provide the director of DBEDT the ability to designate the use of these funds rather than the board, due to its current inactivity.

In addition, the department also requests the measure include appropriation language in order for the department to expend funds:

> *There is appropriated out of the Hawaii Film Office Special Fund the sum of $______ Or so much thereof as may be necessary for fiscal year ________ to be expended for the purposes of §210-113, Hawaii Revised Statutes.*

The ideas proposed in this measure would help to grow and sustain the digital and emerging industries sectors, which are both critical components of Hawaii's creative economy.

Thank you for the opportunity to provide these comments and recommendations.

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

FREDERICK D. PABLO
DIRECTOR OF TAXATION

RANDOLF L. M. BALDEMOR
DEPUTY DIRECTOR

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SENATE COMMITTEES ON ECONOMIC DEVELOPMENT AND TAXATION & EDUCATION

TESTIMONY OF THE DEPARTMENT OF TAXATION
REGARDING HB 1308, HD 1
RELATING TO DIGITAL MEDIA

TESTIFIER:	**FREDERICK D. PABLO, DIRECTOR OF TAXATION (OR DESIGNEE)**
COMMITTEE:	**EDT/EDU**
DATE:	**MARCH 16, 2011**
TIME:	**1:15PM**
POSITION:	**DEFER TO DBEDT; OPPOSED TO ASSIGNABLE CREDITS**

This measure establishes digital media enterprise subzones surrounding the University of Hawaii campus, which include certain tax benefits.

DEFERRAL TO DBEDT—The Department defers to the Department of Business, Economic Development & Tourism on whether the enterprise zone incentives should be expanded to include this program.

ASSIGNMENT OF CREDITS - The Department of Taxation (Department) **opposes the provision allowing assignment of credits,** and recommends the legislature instead pattern this credit after section 42 of the Internal Revenue Code, the low-income housing credit, which is a proven method for providing tax credits to allow financing for construction of desired buildings.

The Department is strongly opposed to any provision that allows Hawaii tax credits to be sold, assigned, or transferred from one taxpayer to another. Allowing taxpayers to market or sell their tax credits is fundamentally poor tax policy. Selling tax credits can be subject to abuse and suspect motivation by parties involved.

The Department's fundamental and primary concerns regarding credit transfers are the following:

- The transferability rewards a separate taxpayer unrelated to the taxpayer that generated the credit, which is fundamentally poor tax policy for encouraging behavior and directly rewarding that behavior;

- The Department is not setup to regulate credit transfers. Will the Department be required to establish a "Bureau of Credit Conveyances" in order to track transfers? If this is the case, resources will have to be dedicated to this;

- Abuse relating tax credit transfer prices will be problematic. The State will be out a $1 when taxpayers will be transferring this $1 for pennies;

- And, there will be problems on audit. The taxpayer being audited may have sold the credit to another taxpayer. It is also unclear whether the tax credit is refundable or nonrefundable.

The Department suggests avoiding these problems by patterning any infrastructure credit after the federal low-income housing credit, section 42 of the Internal Revenue Code.

CONCERN OVER AGGREGATE CAP—The Department generally opposes aggregate caps, especially in this measure's form. There is no legislative guidance on how the cap is to be administered. Is the cap based on who files first? Do taxpayers need to apply for the credit? Should the credit be spread evenly amongst all taxpayers? All of these issues arise when an aggregate cap is instituted. These issues become even more concerning when there are a substantial number of taxpayers claiming the credit.

RECAPTURE – The previous committee amended the bill's 25% recapture rate to 90%. The Department further recommends increasing recapture to 100%.

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LIEUTENANT GOVERNOR

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CATHY L. TAKASE
ACTING DIRECTOR

To:	Senate Committee on Economic Development & Technology Senate Committee on Education
From:	Cathy L. Takase, Acting Director
Hearing:	Wednesday, March 16, 2011, 1:15 p.m. State Capitol, Room 016
Re:	Testimony on H.B. No. 1308, H.D. 2 Relating to Digital Media

The Office of Information Practices (OIP), which administers the State's public records law, the Uniform Information Practices Act (Modified), HRS chapter 92F (the UIPA), takes no position on the purpose of this bill, but offers the following comment on a proposed confidentiality provision.

A proposed new subsection (l) (page 14, lines 1 thru 11) provides that information submitted by a taxpayer applying for a tax credit shall not be subject to public disclosure when the information is "considered by the taxpayer and acknowledged by the department as confidential" under criteria set forth. The section then sets forth a standard for confidentiality that is nearly identical to the standard used to withhold confidential business and financial information under the frustration exception to disclosure under the UIPA.

The UIPA provides a uniform scheme to address public disclosure and protection of government records, including confidential commercial or financial information. The proposed confidentiality statute appears to afford slightly different treatment to information submitted for the proposed tax credit than is given to other similar commercial and financial information submitted to other government agencies, which may withhold information in accordance with standards adopted for this type of information under the UIPA.

For uniform treatment of similar records, OIP suggests that, if a confidentiality provision is desired, that it be worded to require the department to keep confidential commercial and financial information to the extent that this information falls within an exception to disclosure under chapter 92F.

Thank you for the opportunity to testify on this bill.

L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, MISCELLANEOUS, Digital media infrastructure tax credit

BILL NUMBER: HB 1308, HD-2

INTRODUCED BY: House Committee on Finance

BRIEF SUMMARY: Adds a new part to HRS chapter 209E to establish a digital media enterprise subzone as a geographic area located within an enterprise zone which is: (1) located within a _____ mile radius of a University of Hawaii campus, on or off campus; or (2) any other delineated geographic area designated as a digital media enterprise subzone by the legislature provided that effective July 1, 2011 to June 30, 2013 the establishment of a subzone shall be limited to an area located within a _____ mile radius, on or off campus, of the University of Hawaii-West Oahu.

Allows a taxpayer to claim a tax credit for investment expenditures made for all qualified digital media infrastructure projects within a digital media enterprise subzone in the amount of _____% of the taxpayer's base investment; provided that the tax credit shall be reduced by any credit claimed by the taxpayer under HRS chapter 235 for the same base investment. No more than $_____ in total tax credits under this section shall be authorized in any one taxable year.

Tax credits in excess of a taxpayer's tax liability shall not be refunded but may be carried forward to offset net income tax liability under HRS chapter 235 in subsequent tax years for a period not to exceed 10 tax years or until exhausted, whichever occurs first. Stipulates that the credit shall be claimed after all other tax credits available to the taxpayer have been claimed. Allows a taxpayer eligible to claim a tax credit under this section to assign all or a portion of a tax credit to any assignee. Allows an assignee to subsequently assign a tax credit or any portion of a tax credit to one or more assignees. A taxpayer may claim a portion of a tax credit and assign the remaining tax credit amount. A tax credit assignment under this subsection shall be irrevocable. The tax credit assignment under this subsection shall be made on a form prescribed by the department of taxation.

Further delineates procedures to qualify for the credit including the submission of a $100 application fee and a tax credit certification fee to cover the costs of administering the tax credit certification program by DBEDT. Also delineates conditions to qualify for the credit by the taxpayer. If, at the close of any taxable year: (1) the digital media infrastructure project no longer qualifies for the tax credit established under this section; (2) the digital media infrastructure project or an interest in the digital media infrastructure project has been sold by the taxpayer making a base investment in the qualified digital media infrastructure project; or (3) the taxpayer has withdrawn the taxpayer's base investment wholly or partially from the qualified digital media infrastructure project, the tax credit claimed under this section shall be recaptured in the amount equal to 90% of the amount of the total tax credit claimed in the preceding two taxable years. The amount of the recaptured tax credit shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs under this subsection.

The credit shall be repealed on June 30, 2021.

Amends HRS chapter 431 by adding Section 431:7- to provide that the digital media infrastructure tax credit shall be applicable to this article on July 1, 2011. Repeals this section on June 30, 2021.

Renames the Hawaii television and film development special fund as the Hawaii film office special fund, delineate moneys that shall be deposited into the fund and that the monies in the fund shall be used for the operation of the Hawaii film office, including personnel costs of staff positions existing on November 1, 2010; provided that the use of the fund for personnel costs shall be limited to employees performing specialized duties and assigned solely to the Hawaii film office. This section shall be effective until June 30, 2021.

Amends HRS section 201-113 to delineate uses of the Hawaii film office special fund. This section shall take effect on July 1, 2021.

EFFECTIVE DATE: July 1, 2112

STAFF COMMENTS: The proposed measure establishes a digital media enterprise subzone within enterprise zones and surrounding areas of the University of Hawaii campuses. It also proposes a tax credit for investment expenditures made for all qualified digital media infrastructure projects within a digital media enterprise subzone in the amount of ____% of the taxpayer's base investment in addition to any other tax incentives afforded to businesses in an enterprise zone. While this measure proposes tax credits that would result in a payout of state funds, it is incredulous that a proposal such as this would be submitted given the financial crisis in state finances.

In addition, while the measure allows any excess tax credit for investment expenditures to be assigned to any assignee who subsequently may assign a tax credit to one or more assignees, this would create an administrative and record keeping nightmare for the department of taxation. While the measure proposes recapture provisions in the event that the digital media infrastructure project no longer qualifies for the tax credit, or if the project has been sold or the taxpayer's investment has been withdrawn, such provisions should be incorporated into the existing enterprise zone provisions.

In an enterprise zone, businesses are attracted and encouraged to relocate to the zone through tax incentives, bonds, and other appropriate measures. Businesses located in an enterprise zone may claim a credit against taxes paid for a period of seven years and also allows the sale of items sold by such businesses to be exempt from the general excise tax.

While it appears that it is the intent of the legislature to encourage the development of digital media in the state, enterprise zones merely exacerbate what is already considered a poor climate in which to do business. Singling out businesses for preferential treatment merely confers preferences for those businesses at the expense of all other taxpayers.

Concurrent efforts must be made to improve Hawaii's business climate to enhance the economic prospects for all businesses. Enterprise zones are merely an abdication of government's responsibility to create a nurturing and supportive business climate so that all businesses can thrive in Hawaii and provide the jobs the people of Hawaii need.

Instead of expanding the enterprise zone program, the program should be repealed in favor of across-the-board tax relief for all businesses in Hawaii. For example, the consultant to the most recent Tax Review Commission suggested that all business-to-business transactions be exempt from the general excise tax as a means of reducing not only the cost of doing business in Hawaii but the overall cost of living.

Indeed, has there been a comprehensive evaluation of the program and do lawmakers know exactly how much enterprise zone businesses have benefitted and whether or not they have created the jobs promised when the program was first established? If, in fact, lawmakers believe that they need these special zones to attract businesses and to create jobs, what does that say about those areas of the state that are not so favored? Does, in fact, Hawaii's harsh business climate and poor reputation for a place to invest come as a result of providing such tax breaks at the expense of those businesses and individuals who cannot claim these tax incentives? Does the high burden of taxes have to be maintained because "tax relief" is extended to only a chosen few? This is the problem that lawmakers have created in recent years as they single out zones like these or select industries for most favored status. If that is the case, then lawmakers should hang out a sign that says don't come to Hawaii or don't invest in Hawaii unless you can secure a tax break from the legislature.

Inasmuch as this proposal seems to benefit the University of Hawaii as the subzones would be located within an unspecified mile radius of a University campus, consideration should be given to offsetting the revenues losses with a reduction in general fund appropriations to the University. At least that trade off would insure revenue neutrality for the state general fund.

This, along with proposals from film producers, seems to have caught the eye and excitement of lawmakers. Certainly the promise of the land of milk and honey seems all too good to be true especially amidst the doom and gloom of a nearly $1 billion budget shortfall. However, the harsh reality is that on the other end taxpayers are looking at proposals to raise taxes, tax pensions, raise alcohol taxes, slap new taxes on sugary drinks and yet another round of fee and user charge increases. With the loss of millions of dollars in tax breaks and tax credits, how can local taxpayers buy into proposals like these, especially in light of the fact that lawmakers are unwilling to make cuts in other programs? Before lawmakers go off on the deep end entranced by all of these wonderful offers to bring the state to the land of milk and honey, they need to address the fiscal realities on the road before them. On top of this all, lawmakers have yet to address the unfunded liability of the state's retirement and health system.

So while there may be the promise of a new industry and increased career opportunities, lawmakers must return to the cold hard reality of solving the problems at hand. The long and short of it is that due in large part to the irresponsibility of handling state finances in the past, taxpayers cannot afford proposals like this. Thanks to gushing generosity of those lawmakers who gave the state's bank away in all sorts of tax incentive schemes in recent years, taxpayers cannot afford what looks like a promising opportunity.

Digested 3/15/11